

March 12, 2003

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **L01P0001**  
Proposed ordinance no. 2003-0016

**FRANKLIN PLAT**  
Preliminary Plat Application

Location: West of the Enumclaw-Franklin Road and east of the Green River

Applicant: Palmer Coking Coal Company  
*represented by* **Eric Labrie**  
Barghausen Consulting Engineers, Inc.  
18215 – 72<sup>nd</sup> Ave. SE  
Kent, WA 98032  
Telephone: (425) 251-6222

King County: Department of Development and Environmental Services  
Land Use Services Division, *represented by*  
**Lanny Heno**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7168 and 296-7211  
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**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Decision:

Approve subject to conditions

Approve subject to modified conditions

Approved, subject to modified conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:

February 25, 2003

Hearing Closed:

February 27, 2003

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES/TOPICS ADDRESSED:**

- lot clustering
- domestic water
- water quality
- surface water
- ground water
- water rights
- forest practices
- regional trails
- wildlife corridor

**SUMMARY:**

Approves subdivision of three RA-10 classified parcels into six lots.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. General Information:

Owner:	Palmer Coking Coal Co. P. O. Box 10 Black Diamond, WA 98010 Phone: (360) 886-2841
Engineer:	Barghausen Consulting Engineers, Inc. 18215 – 72 <sup>nd</sup> Avenue South Kent, WA 98032 Phone: (425) 251-6222
STR:	Section 25, Township 21, Range 6
Location:	Lying west of the Enumclaw-Franklin Rd. and east of the Green River, in the southeast quarter of Section 25, Township 21, Range 6.
Zoning:	RA-10
Acreage:	66.47
Number of Lots:	6
Density:	1 dwelling unit per 11.08 acres
Lot Size:	Ranges from 5.64 to 10.93 acres
Proposed Use:	Not yet determined by the applicant.
Sewage Disposal:	On-site septic systems
Water Supply:	Individual private wells
Fire District:	No. 28
School District:	Enumclaw School District No. 216

Complete Application (Vesting) Date: March 29, 2001

2. Palmer Coking Coal Company (“Applicant”) represented by Barghausen Consulting Engineers, Inc., proposes to subdivide three existing parcels comprising 66.47 acres into six lots and two sensitive area open space tracts. The proposed lot sizes range from 5.64 acres to 10.93 acres. Considering the environmentally sensitive areas that are set aside in tracts, the development density is one dwelling unit per 11.08 acres. The proposal is illustrated by the Applicant’s preliminary plat drawing contained in this hearing record as Exhibit no. 6. Also, the preliminary report prepared by the Department of Development and Environmental Services (“Department” or “DDES”), entered as Exhibit no. 2, contains as attachment 1 a reduced copy of the Applicant’s preliminary plat drawing.
3. Pursuant to the State Environmental Policy Act (“SEPA”) the Department issued on January 14, 2003, a threshold determination of non-significance (“DNS”) for the Franklin Plat. No person, agency, tribe or other entity appealed the DNS. The Department’ environmental review records are incorporated in this hearing record. The DNS contains several “notes,” in the character of caveats, voluntary mitigating measures or understandings including these:

A. DNS note E states:

The analysis of environmental impacts completed by the Department of Development and Environmental Services for this proposal assumed, for the purposes of preparation of this SEPA determination, that the proposed lots would ultimately be developed with detached single-family residences and accessory uses. The Department has noted that, typically, on rural zoned property, that is the reason a property owner in King County requests the approval of the subdivision of land. If other uses with greater environmental impact are proposed for the site, additional environmental review will be required before permits for such uses are granted.

B. DNS note G states:

Regarding existing vegetation removal from the site for the development of the subject subdivision, the following is stated on page seven of the environmental checklist:

*Except for the creation of the private roads and portions of the proposed drainage facilities, the existing on-site vegetation will remain until lots may be developed with formal uses.*

The following are listed as mitigation measures proposed by the Applicant’s representative in the environmental checklist to mitigate impacts from the project:

*Future clearing related to this proposal will be limited to those areas necessary for the construction of private roads.*

*The proposed subdivision will leave the majority of the site in its present condition, which will serve to retain any existing habitat for wildlife.*

C. DNS note H states:

A salmon hatchery<sup>1</sup> owned and managed by the Washington State Department of Fish and Wildlife exists approximately ¼ mile northwest of the site, at the confluence of Icy Creek and the Green River. Icy Creek provides the water source for the hatchery. The headwaters of Icy Creek exist near the northeast corner of the subject property and are fed by a spring. The subject proposal is not anticipated to have a significant adverse impact on Icy Creek, the Green River or the salmon hatchery.

These DNS notes, based in large part on the Applicant's proposal itself, have proved to be problematic through the course of this review—although, as noted above, no SEPA appeal was filed. Relevant facts are presented in the findings below.

4. The Department recommends granting preliminary plat approval to the Franklin Plat, subject to the 16 conditions stated on pages 10 through 13 of its preliminary report (exhibit no. 2) as amended by the following changes and additions:

A. Recommended condition no. 16 is deleted and the following substituted:

The limits of clearing for the construction of the plat infrastructure shall be shown on the final engineering plans. Forest management activities beyond these clearing limits is permitted and shall be reviewed and approved through the processing of either a class I or class IV forest practice to the extent required by state and county law. In no event shall clearing activities extend into required stream and steep slope/landslide hazard buffers referred to in condition 13 above. The stream and steep slope/landslide hazard buffers shall also be shown on the engineering plans.

B. New recommended condition no. 17 would require the following note to appear on the finally recorded plat:

The irrigated lawn, irrigated landscaping and/or irrigated garden area shall not exceed 3,630 square feet on each lot in this plat, unless a water right is secured from the Washington State Department of Ecology (or its successor agency) pursuant to the requirements of RCW 90.44.050.

5. The Applicant accepts all of the Department's recommended conditions of final plat approval as described above, except new recommended condition no. 17. The Applicant argues that the proposed limitation on lawn, landscape and/or garden area does not comport with the "plain meaning" of RCW 90.44.050; that the Supreme Court decision upon which the limitation is based is being reconsidered by the Court; that it is improper for the local land use authority to

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<sup>1</sup> The parties stipulate that the State Fish and Wildlife facility is comprised of rearing ponds, not a hatchery. See also finding no. 12.

impose a condition based upon water rights (which are regulated by State Department of Ecology); that it has never been before required of a development in King County; and, that it is discriminatory, unfair and gratuitous.

6. The Department bases new recommended condition no. 17 on its confidential communications with the Office of the Prosecuting Attorney, Civil Division, and on a letter from Bill Lasby, supervisor, Drinking Water Program, Community and Environmental Health Section, Seattle-King County Department of Public Health (“Public Health”) which states in part (exhibit no. 21)<sup>2</sup>:

For the purposes of this six-lot plat, Public Health would **not recommend requiring** water rights prior to plat approval. Water usage would be estimated at a minimum of six times 400 gallons per day or a total of 2,400 gallons per day. This is based on Section 4, individual water supply systems, *Guidelines for Determining Water Availability for New Buildings*, and April, 1993, Ecology Publications 93-27, adequate water quality for a residential dwelling is not less than 400 gallons per day. This is codified in Title 13 of the King County Board of Health, specifically section 13.04.070(B)(3)(a).

This also assumes that the residences [sic] water use would be for domestic use and the watering of a typical lawn and garden space only. **Note that the one-half acre irrigation limitation would apply to all of the lots in total for the plat. In other words, the amount of land irrigated would not exceed one-half acre collectively for all six lots. This is per direct communication with the Department of Ecology.**

Mr. Lasby’s letter also refers to the Washington Supreme Court decision regarding *Department of Ecology v. Campbell and Gwinn, et al.*<sup>3</sup>, a Washington State Department of Health letter dated July 3, 2002 (not in evidence) stating, in part “this decision is fundamentally consistent with element no. 1 of the 1997 attorney general opinion (AGO 1977 [sic], no. 6).<sup>4</sup>”

7. The Applicant is uncertain regarding the future use(s) of the proposed six lots. Although the Department has assumed that it will be residential, due to the RA-10 zoning classification of the property, the Applicant indicates that it has no plans to develop the property and is uncertain when, if ever, it will be developed. Testimony, Kombol. Moreover, the Applicant’s SEPA environmental checklist states, in part:

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<sup>2</sup> Near completion of this two-day hearing, the Applicant moved for discovery of all notes, logs, minutes, email or other documentation regarding the circumstances related to exhibit no. 21. That motion was denied. The Appellant was unable to articulate the precise purpose of the discovery request, indicating only that it might be useful upon higher review. The Examiner noted that regardless of whatever discussions Public Health and DDES may or may not have had, exhibit no. 21 represents the official position of both of the Departments and contains sufficient explanation of the reasoning for water usage limits in the absence of a state DOE permit.

<sup>3</sup> *Department of Ecology v. Campbell and Gwinn, LLC*, a Washington limited liability company; and *E. A. White and Beverly White, husband and wife*; 146 Wa. 2<sup>nd</sup> 1; 43 Pacific 3<sup>rd</sup> 4; 2002 Wn. LEXUS 188.

<sup>4</sup> The proper reference should read “AGO 1997 no. 6.”

Presently, it is undetermined when construction of the lots will occur, as it is not our client's intent to develop this project. This proposed subdivision could be put into forestry production or other allowed uses.

Exhibit no. 4.

8. RCW 90.44.050 prohibits withdrawal of public ground waters unless an application to appropriate such waters has been made to the State DOE and the permit has been granted by it. However, it provides for a number of exceptions (discussed further in conclusion no. 1) including “withdrawal of public ground waters for stock watering purposes.” The Applicant argues that DDES has not regulated livestock watering in its recommended new condition no. 17, but has chosen instead to focus on lawns and gardens—even though the Applicant is uncertain of the future use of these properties. The implication appears that such water use would be unlimited. However, KCC 21A.30.040 limits livestock densities. Uncovered large livestock are limited to three “animal units” per gross acre of vegetated site area and must comply with KCC 21A.30.060 farm management plan requirements. An “animal unit” is “one adult horse or bovine, two ponies, five small livestock, or equivalent thereof...” KCC 21A.30.040.4. You can lead a horse to water, but you can't make it drink more than it wants to. That fact, coupled with the “animal unit” limitation, effectively limits livestock watering appropriation.
9. Doreen Johnson, Howard Johnson, and Wade Higgins oppose the Franklin Plat as presently constituted. None live near the subject property. None testified to any perceived direct impact upon any property they may own. However, each has been active in the broader community regarding issues of environmental quality for many years—particularly in the Coal Creek Basin and Icy Creek area.
10. Doreen Johnson opposes the lot averaging or clustering allowed by the zoning code, contending that the Applicant should not be allowed lots smaller than ten acres (the base density of the RA-10 zoning classification). As noted in finding no. 1, above, the development density of Franklin Plat is 11.08 acres per unit or lot, even though actual lot sizes range from 5.64 to 10.93 acres. The development density exceeds any individual lot area because the code allows the inclusion of protected environmentally sensitive areas when calculating plat density. Franklin Plat includes 22.87 acres of environmentally sensitive areas set aside in separate tracts A and C. exhibit no. 6.
11. Ms. Johnson argues for maximum buffers and setbacks from steep slopes in order to protect water resources; for provision for trails and upland wildlife corridors; and opposes the sub-basin transfer variance granted by the surface water management variance. She would prefer to see King County purchase the subject property to augment the Green River green belt. The hearing record shows that, indeed, King County is considering such an acquisition although full funding is not presently available.
12. Icy Creek, to which the subject property lies adjacent, supplies a State Department of Fisheries rearing pond near the confluence of Icy Creek and Green River. Howard Johnson argues that the Franklin Plat poses a significant risk to the Green River fisheries. He considers the studies conducted on the proposal thus far to be superficial. His concerns include not only water quality degradation but also water volume and temperature.

13. Wade Higgins has little formal geological engineering training, but has studied the Coal Creek Basin and Icy Creek vicinity for years. Mr. Higgins disagrees with both the Applicant's hydrogeological consultant (Brian Beaman of Icicle Creek Engineers or "ICE") and the DDES geologist (Larry West) regarding the conductivity of subsurficial strata. He expresses concern that wells drilled for the Franklin Plat will tap deep ground water perched on glacial till, thereby posing a "very real threat" to the flow regime and thus the ecology of Icy Creek during low flow periods.
14. Public Health has granted preliminary approval to both the individual well system proposal and the on-site septic treatment system. The Health Department bases its approval on Board of Health ("BOH") Regulations Title 13, soils types and preliminary test drilling conducted by the Applicant's consultant. Among the various and rigorous BOH Title 13 requirements, septic treatment systems must be set back from any individual well at least 100 feet. Prior to building on any of the approved lots, specific on-site tests and designs must be approved by Public Health.
15. The hearing record contains no evidence that Public Health and BOH rules and regulations are faulty on their face or faulty as applied to this specific property. Johnson and Higgins express concern that due to "excessive permeability" shown on generalized soils maps and due to the granular nature of substrata in the area, septic effluent discharges may travel too rapidly too far without adequate treatment, thereby contaminating springs that feed Icy Creek. Beaman, disagrees. So also do West and A. C. Kindig, Ph.D. (exhibit no. 13).
16. Beaman responds to the Johnson and Higgins concerns, in part (exhibit no. 27):

Based on the results of Franklin Plat wells 1 and 2, it appears that the chances of a well "tapping into" the Icy Spring aquifer (the buried Coal Creek paleochannel) or some theoretical "deep aquifer" are remote. ...if anything, this Franklin Plat area recharge will be a "contribution" rather than a "withdrawal" because the plat relies on groundwater withdrawals from on-site wells and water from the plat will be discharged to on-site infiltration ponds and on-site wastewater disposal systems.
17. Kindig's analysis addressed quantified stormwater quality, risk assessment of non-point homeowner lot pollutants and household chemical impacts via septic effluent, as well as thermal impact. He reviewed state water quality standards, the King County Surface Water Design Manual requirements and existing Icy Creek water quality. He considered the underground flow regimes identified by ICE and discussed by both ICE (Beaman) and Higgins. He considered metals content, as well as oil, grease, total petroleum hydrocarbons (TPH), suspended solids, nutrients, pesticides and herbicides, fecal coliforms and biochemical oxygen demand (BOD). Such a review, necessarily, considered the wet-pond design required by the Surface Water Management Design manual of King County and stormwater facility maintenance requirements. He further considered wet pond, sand filter and septic water quality treatment capacities. Non-point pollution considered by Kindig included petrochemicals, automobile products and metals, pesticides and herbicides, nitrogen, phosphorous and metals from fertilizers, animal waste, and detergents. In his conclusion he noted the following:
  - BOH and state health regulations prohibit the disposal of household chemicals (such as strong bases, acids or chlorinated organic solvents) to septic tanks.

- Surfactant mobility is minimal in the soil beneath a septic tank tile field.
- Even if unlawful discharges occur, the soil profile underlining the majority of Franklin Plat includes a greater distance to groundwater and contains soils with a silty to medium sand component underlined by glacial drift soils which would have the capacity to remove any volatile organic compounds resulting from septic effluent.

His work appears in exhibit no. 13 and relies on exhibit nos. 12 and 16. Further analyses contained in exhibit nos. 15 and 17 corroborate his assumptions.

- Kindig concluded that the potential temperature increase to Icy Creek would be 0.008 to 0.032 degrees Fahrenheit under most severe circumstances. Under the more reasonable assumption that impoundment outflow temperature would be 65 degrees, the temperature increase range (still assuming no subsurface thermal loss) would be 0.004 to 0.018 degrees Fahrenheit. Kindig states, “Neither of these temperature differences would represent an adverse or measurable impact to Icy Creek, the WDFW fish ponds downstream, or the Green River.” Of course, due to the high infiltration capacity of Franklin Plat soils, “pond outflow” to Icy Creek is not expected except possibly during a rare, large and sustained storm event.
- The proposed lot sizes, discussed in finding no. 1 above, comply with the RA-10 zoning requirements. The Department cites KCC 21A.12.030.A and B and page G.2 of the King County Comprehensive Plan which allows lot clustering. In the case of Franklin Plat, lots are allowed reduced size to compensate for the large area set aside in perpetuity as tracts to protect environmentally sensitive streams and steep/hazardous slopes. Referring to the lot clustering concept as used by some other jurisdictions, the Applicant briefly agreed with Ms. Johnson that Franklin Plat did not represent true lot clustering—which, the Applicant’s representative contends, includes a density bonus for clustering. He did not pursue that argument. We notice that, in the case of King County and in the case of Franklin Plat, the Applicant instead receives a lot size reduction bonus. If the County did not recognize the present plan as lot clustering, it would require a minimum lot size of 7.5 acres pursuant to the RA-10 zoning classification.
- Although concerns have been expressed, there is no evidence in the hearing record that county trail plans would be jeopardized by development of the Franklin Plat. Moreover, the environmentally sensitive areas set aside provide more than ample space for wildlife corridor—exceeding County standard established by KCC 21A.14.270.A.2. Mr. Henoch, representing the Department, obtained positive comments from Tom Eksten of Water and Land Resources Division regarding the Franklin Plat proposal. Mr. Eksten administers and coordinates the King County Regional Trails plan.
- King County will maintain the drainage facility even though access will be obtained by private road. In such circumstances, the County typically obtains easements to assure access.
- The Department’s preliminary report to the Examiner (exhibit no. 2) is accurate. It is adopted and incorporated here by this reference. A copy of exhibit no. 2 will be attached to each copy of this report and decision that is submitted to the Metropolitan King County Council.



## CONCLUSIONS:

1. Attorney general opinion AGO 1997 no. 6 preceded *State DOE v. Campbell and Gwinn* by five years. To the extent that some portion might conflict with the Court's decision, it is superseded by the Supreme Court's decision. Nonetheless, we notice that it is remarkably consistent with the Court's decision. The Court ruled (*italics added for emphasis*):

For purposes of the five-thousand gallons per day limitation on groundwater withdrawals exempt from the permit requirement of RCW 90.44.050, *the development of a residential subdivision constitutes a group domestic use for which only one five-thousand gallon per day exemption may be taken. Where a developer of a residential subdivision proposes to use multiple wells that would, individually, withdraw less than five-thousand gallons per day but that would, collectively, exceed the five-thousand gallons per day limit, the exemption is unavailable.*

Thus, the Court established that a residential subdivision constitutes a “group domestic use” subject to review concerning probable groundwater withdrawal. The Court elaborated further:

RCW 90.44.050 plainly says that the exemption applies provided 5,000 GPD or less is used for domestic purposes. This is true, this statute provides, whether the use is to be a single use or group uses. That is, whether or not the use is a single use, by a single home, or a group use, by several homes or a multi-unit residence. The exemption remains at one 5,000 gallon GPD limit according to the plain language of the statute. The developer of a subdivision is, necessarily planning for adequate water for group uses rather than a single use, and accordingly is entitled to only one 5,000 GPD exemption to the project.

The Court continued (*italics added for emphasis*):

RCW 90.44.050 plainly contemplates, as do related statutes, that a permit is required before any construction occurs and before any withdrawal of water is made. Withdrawal of water, alone, is not the activity that necessitates a permit. *A permit is required earlier in the process before any well is dug or other works constructed for withdrawal of ground water.*

And further (*ibid.*):

Thus under RCW 90.44.050 and related statutes, qualification for the exemption does not depend, as respondents claim, solely on who ultimately withdraws the water and puts it to beneficial use. It [146 Wn. 2<sup>nd</sup> 14] also concerns the person planning the wells or other works before any water is ever withdrawn.

Finally (*ibid.*):

It is the developer, not the homeowner, who is seeking the exemption in order to drill wells on subdivisions lots and provide for group domestic uses in excess of 5,000 GPD. The developer may not claim multiple exemptions for the homeowners.

The Court’s decision, cited in part here, is clear and unequivocal. It compels review of the Franklin Plat and other rural plats relying on individual or community wells to be reviewed with respect to state DOE water withdrawal permitting requirements. When asked to interpret the “plain meaning” of statute, we will defer to the Supreme Court and the Attorney General rather than to the Applicant’s arguments.

2. Public Health does not recommend requiring water rights prior to plat approval, due to an estimated (minimum) daily water consumption of approximately 2,400 gallons per day at build-out. However, Public Health’s estimate assumes that water use would be for residential domestic use and watering of a “typical lawn and garden space only.” Thus, Public Health (and, in turn, DDES) looks to the RCW 90.44.050 permit exemption for the watering of a lawn or a non-commercial garden not exceeding ½ acre in area....” That is, the Health Department and DDES apply the same reasoning to this exemption as the Supreme Court applied to the “group use” exemption. That is, they applied the RCW 90.44.050 exemption language to the entire development—the same as AGO 1997 No. 6 and as the Supreme Court in *State DOE v. Campbell and Gwinn*.

Thus, Public Health and DDES divide the ½-acre lawn and non-commercial garden exemption among all six Franklin lots, to be averaged among the lots in any manner the Applicant chooses. A regulation or requirement which is consistent with and implements the intentions of statute and case law is not gratuitous as argued by the Applicant.

3. The Applicant asks, but what about stock watering? Why regulate that also? Why “single out” gardens? The answer may be found in finding no. 8, above.
4. The Applicant argues further that it is unfair and discriminatory, arguing that they had no recollection of requiring such a condition before. We notice that formal subdivisions requiring drilled wells are extremely rare in King County, particularly since adoption of the Growth Management Act. There is no testimony in the hearing record regarding water rights withdrawal rules as applied to short subdivisions. Most importantly, the issue comes to the fore due to Public Health and DDES efforts to comply with *State DOE v. Campbell and Gwinn*, filed by the Court only one year ago. Given these circumstances, we see no basis supporting the Applicant’s argument that he has been unfairly discriminated against.
5. We do not agree that the Health Department, DDES or the County has exceeded its jurisdiction by recommending condition no. 17. KCC Title 19 requires Public Health approval at the preliminary plat stage of development. *State DOE v. Campbell and Gwinn* applies RCW 90.44.050 to subdivisions. Throughout Washington State, pursuant to RCW 58.17, local jurisdictions review subdivisions.
6. The Applicant’s argument that *State DOE v. Campbell and Gwinn* is “unpublished” is untrue. It is beyond reconsideration, although—as in all cases—it is subject to further refinement or elaboration in future decisions of the Court. As it stands, it must govern this review.
7. The preponderance of scientific and engineering evidence of record supports the application with respect to all of the environmental issues raised by Johnson, Johnson and Higgins. See, particularly findings nos. 6 through 21.

8. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
9. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
10. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
11. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

#### DECISION:

Proposed Franklin Plat, as described by Exhibit no. 6 of this hearing record, is **GRANTED PRELIMINARY APPROVAL**; subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion no. 5952.
3. The plat shall comply with the base density requirements of the RA-10 zone classification. All lots shall meet the minimum dimensional requirements of the RA-10 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of Department of Development and Environmental Services.
4. The Applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the 1993 King County Road Standards, established and adopted by Ordinance no. 11187.
6. To assure compliance with the King County Fire Code, the following note shall be placed on the final plat:

A fire suppression sprinkler system, approved by the King County Fire Marshal, shall be installed within any residence constructed on Lots 1 – 6 unless a fire apparatus access, approved by the King County Fire Marshal, is constructed to the residence.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the 1998 King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
- a. Drainage plans and analysis shall comply with the KCSWDM. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file.
  - d. The stormwater control facility proposed for the private roads serving the subject plat (Tract B) is an infiltration pond. This facility shall be designed in accordance with the KCSWDM. An easement for the 100-year overflow route shall be provided in general conformance with that depicted on the “Preliminary Roadway and Drainage Plan” (sheet 2 of 3 of the plan set), received February 4, 2003.
  - e. A drainage adjustment (file no. L02V0091) has been approved for the subject plat. All conditions of approval of the adjustment shall be met, and reflected on the engineering plans for the plat.
  - f. Individual lot stormwater infiltration/detention is proposed for the lots in the subject plat. A proposed typical design for the lot infiltration/detention facilities shall be shown on the engineering plans for the plat.

The final design for the individual lot infiltration/detention systems shall be submitted to DDES at the time of building permit review, and constructed under the residential building permits. The design and construction of these drainage systems shall be in accordance with the KCSWDM. The following note shall be shown on the final plat and engineering plans:

The final design for the individual lot stormwater infiltration/detention systems for the lots in this plat, including the determination of the

location of required facilities, shall be reviewed and approved by King County at the time of building permit review. These facilities shall be constructed under the building permit.

8. The following road improvements are required for this subdivision, and shall be designed and constructed in accordance with the 1993 King County Road Standards (KCRS):
  - a. Roads A and B shall be improved to the rural minor access street standard, and shall comply with the requirements of KCRS Sec. 2.06B1, 3, 8 and 9.
  - b. Road variance L01V0083 concerning the length of Roads A and B was approved by the King County Road Engineer. The design of the engineering plans for the subject plat shall comply with the conditions of approval of road variance L01V0083.
  - c. Modifications to the above road conditions may be considered pursuant to the variance procedures in Section 1.08 of the King County Road Standards.
9. The Applicant (or subsequent owner of the lots in the subject plat) shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administrative fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the final plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. As part of the review of the engineering plans for the subject plat, the Applicant shall provide documentation to show that the entering sight distance standard of the King County Road Standards is met at the intersection of Road A with the Enumclaw-Franklin Rd.

In addition, off-site right-of-way shall be deeded to King County at the intersection of Road A with the Enumclaw-Franklin Rd. so that the line-of-sight necessary to meet the entering sight distance standard will be contained within public road right-of-way. Per the applicant, this will require additional right-of-way on both the east and west sides of Enumclaw-Franklin Rd. For the area required on the east side of the road, the applicant may provide an easement in lieu of deeded right-of-way, if desired, which will allow the County access to the affected area for the clearing of vegetation in the future, as necessary, to maintain sight distance.
11. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal

habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

12. The proposed subdivision shall comply with the sensitive areas requirements as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
13. Preliminary plat review has identified the following issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the Applicant.
  - a. Determine by field survey the top, toe, and sides of all “steep slope hazard areas” (as defined by KCC 21A.06.1230) within the subject property and immediately adjacent thereto. Provide a 50-foot buffer from these slopes except for the steep slopes located at the boundary between lots 5 and 6, where the buffer may be reduced to 10 feet. All such areas one acre or greater in size shall be placed in a separate “sensitive area tract” on the final plat map. Steep slope hazard areas smaller than one acre in size shall be placed in a “sensitive area and buffer” on the final plat map.
  - b. As proposed by the Applicant, provide a 165-foot buffer from Icy Creek, where the buffer falls within the subject property, unless the Applicant elects to reduce this buffer to 100 feet during the final plat/engineering review process. The buffer area shall be placed within a sensitive area tract on the final plat map.
  - c. A 15 foot building setback line from the “sensitive area tracts” and the “sensitive area and buffers” shall be placed in the adjacent lots within the subject plat.
14. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the sensitive area tracts. The homeowners' association shall also make provisions for the maintenance of Roads A and B, consistent with KCRS 2.06B1 and B8.

15. Access/utility easements shall be recorded concurrently with the recording of the subject plat which grants the future owners of lots 1-6 the right to use the off-site portions of Roads A and B.
16. The limits of clearing for the construction of the plat infrastructure shall be shown on the final engineering plans. Forest management activities beyond these clearing limits is permitted and shall be reviewed and approved through the processing of either a Class I or a Class IV forest practice permit, to the extent required by State and County law. In no event shall clearing activities extend into required stream and steep slope landslide hazard buffers referred to in condition 13 above. The stream and steep slope/landslide hazard buffers shall also be shown on the engineering plans.
17. The following note shall appear on the final plat:

The irrigated lawn, irrigated landscaping and/or irrigated garden area shall not exceed 3,630 square feet on each lot in this plat, unless a water right is secured from the Washington State Department of Ecology (or its successor agency), pursuant to the requirements of RCW 90.44.050.

OTHER CONSIDERATIONS:

1. The subdivision shall conform to KCC 16.82 relating to grading on private property.
2. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
3. Preliminary approval of this application does not limit the Applicant's responsibility to obtain any required permit or license from the State or other regulatory body. This may include obtaining a forest practice permit from the Washington State Department of Natural Resources for tree removal and State Department of Ecology water withdrawal permit.

ORDERED this 12<sup>th</sup> day of March, 2003.

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T. T. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 12<sup>th</sup> day of March, 2003, to the parties and interested persons of record:

Chris Aalto  
P.O. Box 87  
Black Diamond WA 98010

Brian Beaman  
Icicle Creek Eng, Inc  
22525 SE 64th Place #202  
Issaquah WA 98027

Ron Carter  
3041 S. 201st St.  
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Steve Fiksdal  
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Bellevue WA 98007

Hal Grubb  
Barghausen Engineering  
18215 - 72nd Avenue South  
Kent WA 98032

Peter Hayes  
12036 Riviera Place NE  
Seattle WA 98125

Wade Higgins 2200 NE 10th Pl. #23 Renton WA 98056	Doreen & Howard Johnson WA Environmental Council 31404 SE 392nd Enumclaw WA 98022	Bill Kombol P.O. Box 10 Black Diamond WA 98010
Eric LaBrie Barghausen Engineering 18215 - 72nd Avenue South Kent WA 98032	Jerry Marcey P.O. Box 575 Seattle WA 98111	Muckleshoot Indian Tribe Attn: Environmental Review 39015 - 172nd Ave SE Auburn WA 98092
Eldon Murray 37914 212th Ave. SE Auburn WA 98092	Lisa Parsons 38220 - 272nd Ave. SE Enumclaw WA 98022	Jason Paulsen City of Black Diamond PO Box 599 Black Diamond WA 98010
Laurie Ann Reynolds P.O. Box 181 Black Diamond WA 98010	Triad Associates 11814 - 115th Avenue NE Kirkland WA 98034	WA Dept. of Fish & Wildlife ATTN: Hal Michael 600 Capitol Way N. Olympia WA 98501-1091
Greg Borba DDES/LUSD MS OAK-DE-0100	Kim Claussen DDES/LUSD Current Planning MS OAK-DE-0100	Nick Gillen Wetland Review DDES/SDSS MS: OAK-DE-0100
Lanny Henoch DDES/LUSD Current Planning MS OAK-DE-0100	Kristen Langley DDES/LUSD Land Use Traffic MS OAK-DE-0100	Kate Rhoads Engineering Review LSD MS-OAK-DE-0100
Carol Rogers LUSD/CPLN MS OAK-DE-0100	Larry West DDES/LUSD Geo Review MS OAK-DE-0100	Bruce Whittaker DDES/LUSD Prel. Review Engineer MS OAK-DE-0100

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before March 26, 2003***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before April 2, 2003***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.



If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE FEBRUARY 25 AND 27, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L01P0001

T. T. Titus was the Hearing Examiner in this matter. Participating in the hearing were Lanny Henoch, Randy Sandin, Larry West, Kate Rhoads and Bruce Whittaker, representing the Department; Eric LaBrie and William Kombol, representing the Appellant; Doreen Johnson, Howard Johnson, Brian Beaman and Wade Higgins.

The following exhibits were offered and entered into the record:

Exhibit No. 1	LUSD file no. L01P0001
Exhibit No. 2	LUSD staff report dated February 25, 2003
Exhibit No. 3	Revised Environmental checklist (with attachments), signed by Applicant's representative on December 20, 2002
Exhibit No. 4	SEPA determination of non-significance issued January 14, 2003
Exhibit No. 5	Affidavit of posting, received by LUSD on May 30, 2001
Exhibit No. 6	Revised plat map (3 sheets) received February 4, 2003
Exhibit No. 7	Vicinity map of subject property created February 24, 2003
Exhibit No. 8	King County Assessor's map for Sec. 25, Twp. 21, Range 6 dated 10-15-98
Exhibit No. 9	Wetland evaluation prepared by Terra Associates, Inc. dated December 12, 2000
Exhibit No. 10	Wildlife habitat evaluation prepared by Terra Associates, Inc. dated December 14, 2000
Exhibit No. 11	Review of osprey status prepared by Alder NW dated November 12, 2001
Exhibit No. 12	Icy Creek stream study prepared by Alder NW dated November 12, 2001
Exhibit No. 13	Water quality analysis prepared by A.C. Kindig & Co. dated September 20, 2002
Exhibit No. 14	October 18, 2001 letter from Rocky R. Anderson, Anderson Design Consultants, Inc.
Exhibit No. 15	Preliminary Geotechnical Engineering Services report prepared by Icicle Creek Engineers, Inc., dated December 4, 2000
Exhibit No. 16	September 12, 2002 letter with attachments from Icicle Creek Engineers, Inc. re: hydrogeologic Consultation
Exhibit No. 17	January 3, 2003 letter from Icicle Creek Engineers, Inc. re: geotechnical consultation
Exhibit No. 18	April 2, 2002, letter (with attached April 2, 2002 memo to variance file) from Paulette Norman, Acting KC Road Engineer, approving Road Variance Application L01V0083
Exhibit No. 19	January 16, 2003, letter (with attachments) from James Sanders and Jim Chan, DDES, approving KCS WDM adjustment request L02V0091
Exhibit No. 20	May 28, 2002, letter from Laurie Ann Reynolds
Exhibit No. 21	February 10, 2003 letter from Bill Lasby, King County Health Dept., received February 24, 2003
Exhibit No. 22	Revised/additional conditions, amending condition 16 and adding a new condition 17
Exhibit No. 23a	Memo from Doreen Johnson to the Examiner dated February 25, 2003
Exhibit No. 23b	Tier classification map of the Green River Gorge – King County 2002
Exhibit No. 24	Comments of Wade Higgins (5 pg) with attached streamflow chart and maps (2)
Exhibit No. 25	Memo from Howard A. Johnson to the Examiner dated February 25, 2003

- Exhibit No. 26      Department's revised/additional condition no. 16 and 17
- Exhibit No. 27      Icicle Creek Engineers Memorandum to Eric LaBrie from Brian Beaman dated February 26, 2003
- Exhibit No. 28      Black Diamond Springs Area Bedrock Map Figure 3 prepared by Icicle Creek Engineers
- Exhibit No. 29      Alternative to new condition no. 17, presented by William Kombol
- Exhibit No. 30      Photograph of Upper Holding Ponds at Ice Creek taken by Wade Higgins
- Exhibit No. 31      Doreen Johnson memorandum to the Hearing Examiner dated February 27, 2003

TTT:ms  
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